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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,584	12/31/2003	Daryl Carvis Cromer	RPS920030219US1(4035)	2711

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EXAMINER	
TIV, BACKHEAN	

ART UNIT	PAPER NUMBER
2151	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No.	Applicant(s)	
	10/749,584	CROMER ET AL.	
	Examiner	Art Unit	
	Backhean Tiv	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 December 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *31 December 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *12/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Detailed Action

Claims 1-35 are pending in this application.

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 12/31/2005 has been considered.

Drawings

The Drawings filed on 12/31/03 are acceptable.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 9 is rejected under 35 U.S.C. 101 because the claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Both types of "descriptive material" are nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive

material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.").

Claims 20-35 are rejected under 35 U.S.C. 101 because the claims fail to place the invention squarely within one statutory class of invention. Paragraph 0059 of the instant specification, applicant has provided evidence that applicant intends the "medium" to include signals. As such, the claim is drawn to a form of energy. Energy is not one of the four categories of invention and therefore this claim(s) is/are not statutory. Energy is not a series of steps or acts and thus is not a process. Energy is not a physical article or object and as such is not a machine or manufacture. Energy is not a combination of substances and therefor not a composition of matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3,6,8,9-15,19-24,28-31,35 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,606,709 issued to Connery et al.(Connery) in view of US Patent 6,732,267 issued to Wu et al.(Wu).

As per claim 1, Connery teaches a method comprising: receiving, at a client of a computer system a modified wake-on-LAN packet via a network receive buffer on the client(col.2, lines 5-15), the modified wake-on-LAN packet comprising executable code(col.2, lines 5-15).

Connery however does not explicitly teach storing the executable code in memory associated with the network receive buffer; retrieving the executable code from the memory by an action of BIOS associated with the client; and processing the executable code using the BIOS.

Wu teaches storing the executable code in memory associated with the network receive buffer(Abstract, col.2, lines 19-36); retrieving the executable code from the memory by an action of BIOS associated with the client; and processing the executable code using the BIOS(Abstract, col.2, lines 19-36).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Connery to include storing the executable code in memory associated with the network receive buffer; retrieving the executable code from the memory by an action of BIOS associated with the client; and processing the executable code using the BIOS as taught by Wu in order to update a BIOS on a remote computer system(Wu, col.1, lines5-10).

One ordinary skill in the art would have been motivated to combine the teachings of Connery and Wu in order to to update a BIOS on a remote computer system(Wu, col.1, lines5-10).

As per claim 2, the method of claim 1, further comprising: adding the executable code to a wake-on-LAN packet to yield the modified wake-on-LAN packet and transmitting the modified wake-on-LAN packet to the client(Connery, col.2, lines 5-15).

As per claim 3, the method of claim 1, further comprising verifying the modified wake-on-LAN packet using the BIOS(Connery, Fig.6).

As per claim 6, the method of claim 1, further comprising modifying the BIOS with a set of instructions for the method prior to receiving the modified wake-on-LAN packet(Wu, Abstract).

As per claim 8, the method of claim 1, wherein the receiving comprises receiving the modified wake-on LAN packet over a network(Connery, Abstract).

As per claim 19, the system of claim 12, wherein the network receive buffer comprises the network receive buffer on a NIC card having wake-on-LAN support capability(Connery, Fig.1-6).

As per claims 9-15,20-24,28-31,35 do not teach or further define over the limitations in claims 1-3,6,8,19. Therefore claims (same rationale claims) are rejected for the same reasons set forth above.

Claims 4,5,7,16-18, 25-27, 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,606,709 issued to Connery et al.(Connery) in view of US Patent 6,732,267 issued to Wu et al.(Wu) in further view of 6,542,979 issued to Eckardt.

Connery in view of Wu does not explicitly teach as per claim 4, the method of claim 1, further comprising storing the retrieved executable code to a PARTIES partition of a hard drive associated with the client.

Eckardt teaches storing the retrieved executable code to a PARTIES partition of a hard drive associated with the client(Abstract, col.3, lines 40-61).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Connery in view of Wu to include storing the retrieved executable code to a PARTIES partition of a hard drive associated with the client as taught by Eckardt in order to boot from either the standard partition or non-standard partition(col.1, lines 60-65).

One ordinary skill in the art would have been motivated to combine the teachings of Connery, Wu and Eckardt in order to boot from either the standard partition or non-standard partition(col.1, lines 60-65).

As per claim 5, the method of claim 4, further comprising booting the client from the PARTIES partition using the BIOS prior to the processing of the executable code, wherein the processing occurs through use of an application stored on the PARTIES partition(Eckardt, Abstract, col.3, lines 40-61). Motivation to combine set forth in claim 4.

As per claim 7, the method of claim 1, wherein the processing of the executable code comprises processing a ROM BIOS extension(Eckardt, col.3, lines 55-62). Motivation to combine set forth in claim 4.

As per claims 16-18, 25-27, 32-34, do not teach or further define over the limitations in claims 4,5,7. Therefore claims 16-18, 25-27, 32-34 are rejected for the same reasons set forth above.

Conclusion

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching of all or part of the claimed invention.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Backhean Tiv whose telephone number is (571) 272-5654. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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